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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,467

09/20/2004

Konstandinos Zamfes

5466

37129

7590

06/19/2006

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EXAMINER

FAYYAZ, NASHMIYA SAQIB

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

W

Office Action Summary	Application No. 10/711,467	Applicant(s) ZAMFES, KONSTANDINOS	
	Examiner Nashmiya S. Fayyaz	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1,3 and 4 is/are pending in the application.

 4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☒ Claim(s) 1,3 and 4 is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) ☐ All b) ☐ Some * c) ☐ None of:

 1. ☐ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. ____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/20/04</u> .	6) <input type="checkbox"/> Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are not written in the proper format. Please note the enclosed prior art references as to the proper claim language format. Further, it is unclear if claims 3 and 4 are independent or dependent claims. In claim 1, the recitation of "consisting of" limits the apparatus to only a narrow cylinder and a piston which appears to be incorrect as the piston also has a rod and perhaps other attachment means. Therefore, caution should be used with the usage of "consisting of". Also, as in claim 3, what does "1.2" mean or as in claim 4, what does "2." mean? It appears that these claims should be dependent upon claim 1. Further, in claims 3 and 4, there appears to be no structural limitation recited in apparatus claims. In claim 4, "the rotating", "the thin wall cylinder" and "the cup" lack antecedent basis. Also, "it" on line 1 is unclear. Lastly, claim 4 is missing a period. Again, it is reiterated that the claim format is entirely incorrect.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by David et al- US Patent # 6,176,326. As to claims 1-3, **as best understood**, David et al disclose a soil sampling measuring device including a narrow cylinder (barrel 12) with a piston (plunger 14), see fig. 1. As to claim 3, note volume indicators 36, 38 and 40 are included on the cylindrical wall 20 of barrel 12. As to claim 4, the recitation in the claim is merely intended usage where the David et al is capable of being used by hand and being rotated and pressed into a cup of wet sample.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Underwood- US Patent # 5,245,878. As to claims 1, 3 and 4, **as best understood**, Underwood discloses a vegetation maintenance system including a soil extraction tool with narrow cylinder (soil receiving chamber 20) and piston (plunger 40); see fig. 3. As to claim 3, note col. 5, lines 9-26 explaining reaching the desired depth. As to claim 4, again as this claim apparently merely recites

intended usage, it would appear the Underwood device is capable of being used as recited.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Eley-US Patent # 3,326,049. As to claims 1, 3 and 4, as best understood, Eley discloses a soil sampling device including narrow cylinder (body 11) and piston (20), see Figs. 1-6. As to claim 3, note depth gauge flange 14. As to claim 4, again as this claim apparently merely recites intended usage, it would appear the Eley device is capable of being used as recited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone number is 571-272-2192. The examiner can normally be reached on Mondays and Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

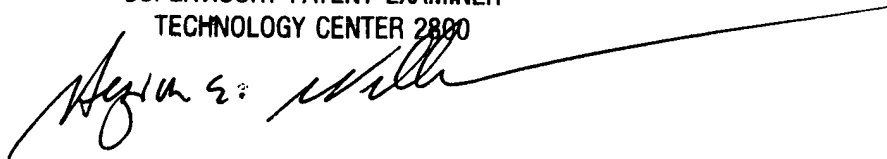
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



nf
6/7/06

7.

HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
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